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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,834	07/14/2003	Koji Wakayama	H-1100	5217
7590 11/28/2007 Mattingly, Stanger & Malur, P.C. Suite 370 1800 Diagonal Road Alexandria, VA 22314			EXAMINER WONG, XAVIER S	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/617,834

Applicant(s)

WAKAYAMA ET AL.

Examiner

Xavier Szewai Wong

Art Unit

2616

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14<sup>th</sup> November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 and 4-16.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
please see continuation sheets.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

***After-Final Amendments***

Claims 2 and 3 have been cancelled

***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 14<sup>th</sup> November 2007 is being considered by the examiner.

***Response to Arguments***

2. Applicant's arguments filed 14<sup>th</sup> November 2007 have been fully considered but they are not persuasive.
3. The Applicants argue that the **Fukumoto et al** reference does not constitute a prima facie case and that **Fukumoto et al** does not create a motivated combination when combined with **Gilbert et al**. The examiner respectfully disagrees with such suggestions.
4. It is true that **Fukumoto et al** do not explicitly teach the central processing unit comprises counting packet function or statistic monitoring function. The line cards do comprise a function that counts the number of packets outputted (paragraph 0038). The examiner considers the "counting packet" function may be implemented into any other device, such as a (statistic monitoring) processor, for counting packets through a network. Further, it is also true that **Fukumoto et al** do not explicitly teach a "statistic monitoring processor." The combination of secondary reference **Gilbert et al**, who teach a "statistic monitoring agent" along with an "expert system" within the same embodiment of a DERPA 30 (fig. 2 items 32 and 33) with primary reference **Fukumoto et al** would have been obvious because the DERPA of **Gilbert et al** do predict traffic patterns (col. 4 lines

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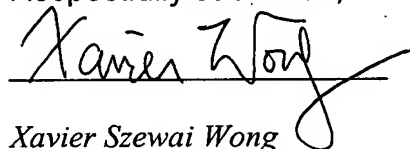
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5-8) and continuously monitoring number of packets (col. 3 lines 42-44) to select an interface (allocate traffic based on predictions/patterns; col. 3 lines 46-50). To clarify, allocating traffic is interpreted as "choosing an interface (or a destination, etc.)" based on predictions. In conclusion, it would have been obvious to one of ordinary skill in the art to combine the DERPA of **Gilbert et al** into the processor of **Fukumoto et al** for traffic monitoring and prediction and choosing an "output" (or interface or any destination, etc.).

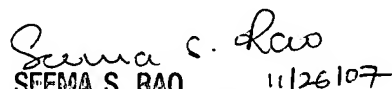
5. The examiner also recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, **Fukumoto et al** and **Gilbert et al** both comprise details in monitoring traffic through a network.

6. Therefore, in view of the above reasons and having addressed the Applicants' arguments, the previous rejection is maintained by the examiner.

Respectfully submitted,



Xavier Szewai Wong  
X.S.W / x.s.w  
21<sup>st</sup> November 2007



SEEMA S. RAO 11/26/07  
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